

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

DEWAYNE D. WILLIAMS

§

VS.

§

CIVIL ACTION NO. 1:09cv193

DIRECTOR, TDCJ-CID

§

MEMORANDUM OPINION

Petitioner Dewayne D. Williams, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Factual Allegations

Petitioner complains about a prison disciplinary conviction. He states that as a result of the conviction, he lost good conduct time credits. However, an administrative appeal resulted in the conviction being reversed and the good conduct time credits being restored. Petitioner states that despite the reversal, certain property lost as a result of the conviction was not returned to him.

Discussion

Petitioner filed this case as a petition for writ of habeas corpus. The line between claims which may be pursued via a petition for writ of habeas corpus and claims which are cognizable in a civil rights action is a blurry one. A civil rights lawsuit is the

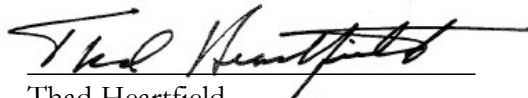
appropriate form of action for an inmate who seeks to recover money damages for unconstitutional conditions of confinement. *Richardson v. Fleming*, 651 F.2d 366 (5th Cir. 1981). In contrast, an inmate who challenges the fact that he is confined must pursue his claim in a petition for writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475 (1973). The core issue in determining what type of action a claim must be asserted in is to determine whether the inmate is challenging the fact or duration of his confinement or the conditions of his confinement. *Spina v. Aaron*, 821 F.2d 126 (5th Cir. 1987).

Petitioner state his good conduct time credits were restored following the reversal of his conviction. As a result, a finding in his favor in this lawsuit will have no effect on the fact or duration of his confinement. Petitioner's complaint regarding his lost property is a claim effecting the conditions of his confinement and, as a result, may not be pursued in a petition for writ of habeas corpus. As a result, this lawsuit will be dismissed. The dismissal is without prejudice to petitioner's ability to file a civil rights lawsuit concerning his property.

Conclusion

For the reasons set forth above, this petition for writ of habeas corpus will be dismissed. A final judgment shall be entered in accordance with this memorandum opinion.

SIGNED this the **23** day of **December, 2009**.


Thad Heartfield
United States District Judge